

**ORDINANCE NO. 2013- 69**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS, AMENDING THE CITY OF NEW BRAUNFELS CODE OF ORDINANCES BY UPDATING CHAPTER 100 "ROADWAY IMPACT FEES;" REPEALING ALL OTHER ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.**

---

**WHEREAS**, Texas Local Government Code, Chapter 395, and its successors, authorizes home-rule cities to enact and impose impact fees on land within their corporate boundaries as charges and assessments imposed against new development in order to generate revenue for funding and recouping the costs of new development; and

**WHEREAS**, the City Council adopted Chapter 100 Roadway Impact Fees on March 12, 2007 which included land use assumptions and a roadway impact fee capital improvement plan for the purpose of adopting the roadway impact fees; and

**WHEREAS**, the City has held the required public hearings and received public input concerning the adoption and implementation of roadway impact fees; and

**WHEREAS**, the City adopted roadway impact fee land use assumptions and a roadway fee capital improvement plan; and

**WHEREAS**, the City has hired Kimley-Horn and Associates, Inc. and it has prepared the 2013 Roadway Impact Fee Study;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:**

**SECTION 1**

**THAT** the New Braunfels Code of Ordinances is hereby amended by revising Chapter 100 "Roadway Impact Fees" which shall hereinafter read in its entirety as presented in Attachment "A" which is incorporated herein.

**SECTION 2**

**THAT** this ordinance shall be and is hereby declared to be cumulative to all other ordinances of the City of New Braunfels, and shall not operate to repeal or affect any such ordinance or ordinances except insofar as the provisions of such ordinance or ordinances are inconsistent or in conflict with the provisions of this ordinance, in which instance or instances those provisions shall be and they are hereby repealed.

### SECTION 3

**THAT** If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, unconstitutional or void, such invalidity, unconstitutionality, or voidness shall not affect other provisions or applications of the ordinance which can be given effect without the invalid, unconstitutional, or void provision or application, and to this end the provisions of this ordinance are declared to be severable.

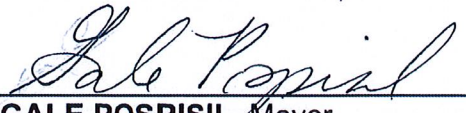
### SECTION 4

**THAT** this ordinance shall take effect upon the second and final reading of the same, but the roadway impact fees made the subject of this ordinance become effective January 1, 2014.


**PASSED AND APPROVED:** First reading this the 28<sup>th</sup> day of October, 2013.

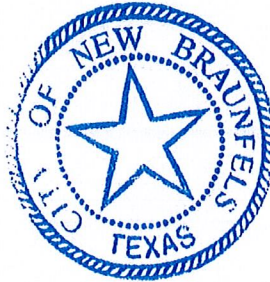
**PASSED AND APPROVED:** Second reading this the 11<sup>th</sup> day of November, 2013.

**CITY OF NEW BRAUNFELS**

  
GALE POSPISIL, Mayor

**ATTEST:**

  
PATRICK D. ATEN, City Secretary



**APPROVED AS TO FORM:**

  
VALERIA M. ACEVEDO, City Attorney

## **CHAPTER 100: ROADWAY IMPACT FEES**

### **TABLE OF CONTENTS**

#### *Article I. General Provisions*

- 100.01 Short title
- 100.02 Intent
- 100.03 Statutory authorization
- 100.04 Definitions
- 100.05 Applicability of impact fees
- 100.06 Impact fees as conditions of development approval
- 100.07 Establishment of roadway service areas
- 100.08 Service units
- 100.09 Impact fees per service unit
- 100.10 Updates to plan and revision of fees

#### *Article II. Impact Fees; Use of Proceeds*

- 100.11 Assessment of impact fees
- 100.12 Calculation of impact fees
- 100.13 Collection of impact fees
- 100.14 Offsets and credits against impact fees
- 100.15 Exemptions
- 100.16 Establishment of accounts and records
- 100.17 Use of proceeds of roadway impact fee accounts

#### *Article III. Administration and Enforcement*

- 100.18 Appeals
- 100.19 Refunds
- 100.20 Advisory Committee
- 100.21 Agreement for capital improvements
- 100.22 Impact fees as additional and supplemental regulation
- 100.23 Relief procedures

### **ARTICLE I. GENERAL PROVISIONS**

#### **§ 100.01 SHORT TITLE.**

This chapter shall be known and cited as the City of New Braunfels Roadway Impact Fee Ordinance.

#### **§ 100.02 INTENT.**

This chapter is intended to impose roadway impact fees, as established in this chapter, in order to finance public facilities, the demand for which is generated by new development in the designated service area or areas.

### **§ 100.03 STATUTORY AUTHORIZATION.**

The city is authorized to enact this Chapter by Texas Local Government Code, Ch. 395, and its successors, which authorizes home-rule cities to enact or impose impact fees on land within their corporate boundaries as charges or assessments imposed against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development and by the City Charter. The provisions of this Chapter shall not be construed to limit the power of the city to adopt the Chapter pursuant to any other source of local authority, nor to utilize any other methods or powers otherwise available for accomplishing the purposes set forth herein, either in substitution of or in conjunction with this Chapter. Guidelines may be developed by resolution or otherwise to implement and administer this Chapter.

### **§ 100.04 DEFINITIONS.**

For the purpose of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ASSESSMENT.** The determination of the amount of the maximum impact fee per service unit which can be imposed on new development pursuant to this Chapter.

**BUILDING PERMIT.** Written permission issued by the City for the construction, repair, alteration or addition to a structure.

**CAPITAL CONSTRUCTION COST OF SERVICE.** Costs of constructing capital improvements or facility expansions, including and limited to the construction contract price, surveying and engineering fees, land acquisition costs (including land purchases, court awards and costs, attorney's fees and expert witness fees) and the fees actually paid or contracted to be paid to an independent qualified engineer or financial consultant preparing or updating the Capital Improvements Plan who is not an employee of the City.

**CAPITAL IMPROVEMENTS PROGRAM (CIP).** Plan which identifies roadway capital improvements or roadway facility expansions pursuant to which impact fees may be assessed.

**CITY.** The City of New Braunfels, Texas.

**CITY ENGINEER.** The person designated by the PW Director as the City Engineer.

**CITY PLANNING DIRECTOR (PLANNING DIRECTOR).** Planning Director of the City.

**CITY PUBLIC WORKS DIRECTOR (PW DIRECTOR).** Public Works Director of the City.

**COMMERCIAL DEVELOPMENT.** All development which is neither residential nor industrial.

**COMPREHENSIVE PLAN (MASTER PLAN).** The comprehensive long-range plan, adopted by the City Council, which is intended to guide the growth and development of the City which includes analysis, recommendations and proposals for the City regarding such topics as population, economy, housing, transportation, community facilities and land use.

**CREDIT.** The amount of the reduction of an impact fee for fees, payments or charges for the same type of capital improvements for which the fee has been assessed.

**FACILITY EXPANSION.** The expansion of the capacity of an existing facility which serves the same function as an otherwise necessary new capital improvement in order that the existing facility may serve new development. **FACILITY EXPANSION** does not include the repair, maintenance, modernization or expansion of an existing facility to better serve existing development.

**FINAL SUBDIVISION PLAT.** The map, drawing or chart meeting the requirements of the City's platting regulations and which has received final approval by the Planning and Zoning Commission or City Council and which is recorded with the office of the County Clerk.

**GROWTH-RELATED COST.** Capital construction costs of service related to providing additional service units to new development, either from excess capacity in existing facilities, from facility expansions or from new capital facilities. Growth-related costs do not include the following:

(1) Construction, acquisition or expansion of public facilities or assets other than capital improvements or facility expansions identified in the Capital Improvements Plan.

(2) Repair, operation or maintenance of existing or new capital improvements or facility expansions.

(3) Upgrading, updating, expanding or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards.

(4) Upgrading, updating, expanding or replacing existing capital improvements to provide better service to existing development.

(5) Administrative and operating costs of the City.

(6) Principal payments and interest or other finance charges on bonds or other indebtedness, except for such payments for growth-related facilities contained in the capital improvements program.

**IMPACT FEE.** Roadway impact fee to be imposed upon new development, calculated based upon the costs of roadway facilities in proportion to development creating the need for the roadway facilities. Dedication of rights-of-way or easements, or internal roadways required by other ordinances of the City Code are not to be considered as impact fees.

**LAND USE ASSUMPTIONS.** Description of the service area(s) and projections of changes in land uses, densities, intensities and population therein over at least a ten-year period, adopted by the City, as may be amended from time to time, upon which the Roadway Improvements Plan is based.

**NEW DEVELOPMENT.** Subdivision and development of land; the construction, reconstruction, redevelopment, conversion, structural alteration, relocation or enlargement of any structure; or any use or extension of the use of land; any of which increases the number of service units for roadway service units. New development does not include the issuance of a certificate of occupancy for any use for which a building permit is not necessary.

**OFFSET.** The amount of the reduction of an impact fee designed to fairly reflect the value of system-related facilities, pursuant to rules herein established or administrative guidelines provided and funded by a developer pursuant to the City's subdivision regulations or requirements.

**RESIDENTIAL DEVELOPMENT.** A lot developed for use and occupancy as a residence or residences, according to the City's zoning ordinance.

**ROADWAY FACILITY.** Improvement for providing roadway service including, but not limited to, pavement, right-of-way, drainage and traffic-control devices.

**ROADWAY FACILITY EXPANSION.** Expansion of the capacity of any existing roadway improvement for the purpose of serving new development, not including the repair, maintenance, modernization or expansion of the existing roadway facility to serve existing development.

**ROADWAY IMPACT FEE ADVISORY COMMITTEE (ADVISORY COMMITTEE).** The Advisory Committee, appointed by the City Council pursuant to Chapter 395 of the Local Government Code, and its successors.

**ROADWAY IMPROVEMENTS PLAN.** Portion of the CIP, as may be amended from time to time, which identifies the roadway facilities or roadway expansions and their associated costs which are necessitated by and which are attributable to new development and which are to be financed in whole or in part through the imposition of roadway impact fees pursuant to this Chapter. Also known as the "Roadway Impact Fee Capital Improvement Plan."

**SERVICE AREA.** Area within the corporate boundaries to be served by the capital improvements or facility expansions specified in the Roadway Improvements Plan applicable to the service area.

**SERVICE UNIT.** Standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards for a particular category of capital improvements or facility expansions.

**SITE-RELATED FACILITY.** Improvement or facility which is for the primary use or benefit of a new development and/or which is for the primary purpose of safe and adequate provision of roadway facilities to serve the new development, which is not included in the Roadway Improvements Plan, and for which the developer or property owner is solely responsible under subdivision and other applicable regulations.

**SYSTEM-RELATED FACILITY.** A roadway improvement or facility expansion which is designated in the Roadway Improvements Plan and which is not a site-related facility. A system-related facility may include a roadway improvement which is approved by the PW Director and is not a site-related facility.

**VEHICLE MILE.** A unit used to express both supply and demand provided by, and placed on the roadway system. A combination of a number of vehicles traveling during a given time period and the distance in which these vehicles travel in miles.

#### **§ 100.05 APPLICABILITY OF IMPACT FEES.**

(A) This chapter shall be uniformly applicable to new development which occurs within the corporate limits of the City.

(B) No new development shall be exempt from the assessment of impact fees unless expressly made so by the terms of this Chapter.

#### **§ 100.06 IMPACT FEES AS CONDITIONS OF DEVELOPMENT APPROVAL.**

No application for new development shall be approved within the City without assessment of impact fees pursuant to this chapter, and no water and wastewater tap shall be issued and no building permit or certificate of occupancy shall be issued unless

the applicant has paid the impact fees imposed by and calculated hereunder unless expressly exempted by a provision of this Chapter.

#### **§ 100.07 ESTABLISHMENT OF ROADWAY SERVICE AREAS.**

(A) (1) There is hereby established roadway service areas as depicted on Exhibit 1 Page 2, incorporated herein by reference.

(2) The boundaries of the roadway service areas may be amended from time to time, and new roadway service areas may be delineated by the City Council consistent with the procedure set forth in the Local Government Code, Ch. 395, as amended, and its successors.

#### **§ 100.08 SERVICE UNITS.**

(A) Service units are established in accordance with generally accepted engineering and planning standards.

(B) The City Council may revise the service units designation according to the procedure set forth in the Local Government Code, Ch. 395, as amended, and its successors.

#### **§ 100.09 IMPACT FEES PER SERVICE UNIT.**

(A) (1) The assessable roadway impact fees per service unit for the facilities are incorporated as Exhibit 1.

(2) Assessable impact fees in Exhibit 1 may be amended by the City Council according to the procedure set forth in Local Government Code, Ch. 395, as amended, and its successors.

#### **§ 100.10 UPDATES TO PLAN AND REVISION OF FEES.**

The City shall review the land use assumptions and Roadway Improvements Plan for roadway facilities at least every five years. The City Council shall then make a determination of whether changes to the land use assumptions, Roadway Improvements Plan or impact fees are needed and shall, in accordance with the procedures set forth in the Local Government Code, Ch. 395, as amended, or any successor statute, either update the fees or make a determination that no update is necessary.

### **ARTICLE II. IMPACT FEES; USE OF PROCEEDS**

#### **§ 100.11 ASSESSMENT OF IMPACT FEES.**



(A) The approval of any plat or replat of land or of any development shall include as a condition the assessment of the impact fee applicable to the development.

(B) Assessment of the impact fee for any new development shall be made as follows.

(1) For a development which is submitted for approval pursuant to the City's platting regulations following January 1, 2014, assessment shall be at the time of final plat approval and shall be the value of the impact fee per service unit then in effect, as provided in Exhibit 1, as set forth in § 100.09.

(2) For a development which has received final plat approval prior to January 1, 2014, and for which no replatting is necessary prior to building permit issuance, assessment shall be upon building permit issuance and shall be the value of the roadway impact fee per service unit set forth in Exhibit 1.

(3) For a development for which platting is not required, assessment shall be upon the issuance of a building permit.

(C) Following assessment of the impact fee pursuant to subsection (B), no additional impact fees or increases thereof shall be assessed against that development unless the number of service units increases, as set forth under § 100.08.

(D) Following the lapse or expiration of approval of plat, a new assessment must be performed at the time a new plat is approved.

#### **§ 100.12 CALCULATION OF IMPACT FEES.**

Following the request for new development, the Planning Director shall compute impact fees due for the new development in the following manner.

(A) In calculating roadway impact fees for a new development, it is first necessary to identify in which service area the development is located and then classify the development in one of the land use categories depicted in current collected roadway impact fee per land use category per service area as set forth in Exhibit 1.

(B) The final determination of the roadway impact fee to be charged each new development is then calculated by multiplying the current collected roadway impact fee for the corresponding service area and land use category identified above by the total development units (in number of dwelling units, square footage in 1,000 square foot increments or other development unit increments as indicated in Exhibit 1).

#### **§ 100.13 COLLECTION OF IMPACT FEES.**

(A) All roadway impact fees shall be collected at the time of building permit issuance. If impact fees are to be collected, the building permit shall not be issued until such fees have been collected by the City.

(B) Development on all lots lying within a plat that has final plat approval from the City on or before January 1, 2014 shall be required to make payment of the roadway impact fee established in Ordinance 2007-19 adopted March 12, 2007.

(C) Development on all lots lying within a plat that has final plat approval after January 1, 2014 shall pay the roadway impact fee at time of the issuance of the building permit.

(D) Development for which platting is not necessary or required shall have the roadway impact fee assessed and collected at time of the issuance of the building permit.

(E) If the building permit expires or is canceled, and no new application is made and approved and the new development was permitted but not build, the roadway impact fee which was previously paid shall be returned to the person who paid the fee after submitting an application letter which states the reasons for returning the fee.

#### **§ 100.14 OFFSETS AND CREDITS AGAINST IMPACT FEES.**

(A) The City may offset the present value of any system-related facilities, pursuant to rules established in this section, which have been dedicated to and have been received by the City, including the value of capital improvements constructed pursuant to an agreement with the City as set forth in § 100.21, against the value of the impact fee due for that category of roadway improvement.

(B) All roadway impact fees shall be credited on a present value dollar for dollar basis.

(C) All offsets and credits against impact fees shall be subject to the following limitations and shall be granted based on this Chapter and additional standards promulgated by the City which may be adopted as administrative guidelines.

(1) No offset or credit shall be given for the dedication or construction of facilities or improvements required by a traffic impact analysis required by the City Code of Ordinances, unless the City Engineer determines that such dedication or improvements are not development specific improvements and add capacity to the roadway system to a degree beyond the benefit of the development.

(2) The unit costs used to calculate the offsets shall not exceed the actual costs of the constructed roadway improvements as approved by the PW Director.

(3) If an offset or credit applicable to a plat has not been exhausted within ten years from the date of plat approval after January 1, 2014 or within such period as may be otherwise designated by contract, the offset or credit shall lapse.

(4) In no event will the City reimburse the property owner or developer for an offset or credit when no impact fees for the new development can be collected pursuant to this Chapter or for any value exceeding the total impact fees due for

the development for that category of roadway improvement, unless otherwise agreed to by the City Council.

**(5) Capital Improvement Credit.**

- (a) The value of credit for capital improvements made by a developer shall be approved by the PW Director.
- (b) The value of the credit shall be the present value of the construction costs at the time of the construction.

**(6) Right-of-way credit.**

The value of the credit for dedicated right-of-way shall be the greater of (a) the value of the dedicated land as shown on the appraisal district's rolls, or (b) the value as determined by an appraisal as of the date of dedication. The City shall hire the appraiser to perform the appraisal, but the owner/developer shall reimburse the City for the cost of the appraisal.

(D) An applicant for new development must apply for an offset or credit against impact fees due for the development either at or before the time of fee payment, unless the City Council agrees to a different time. The applicant shall file a petition for offsets or credits with the PW Director on a form provided for such purpose. The contents of the petition shall be established by guidelines developed by the Department of Public Works. The PW Director or his designee must provide the applicant, in writing, with a decision on the offset or credit request, including the reasons for the decision. The decision shall specify the maximum value of the offset or credit which may be applied against an impact fee, which value and the date of the determination shall be associated with the plat for the new development.

(E) The available offset or credit associated with the plat shall be applied against an impact fee in the following manner:

- (1) The offset or credit shall be prorated equally among all service units, and remain applicable to the service units, and shall be applied at time of filing and acceptance of an application for a building permit against impact fees due.
- (2) If the total number of service units used by the City in the original offset or credit calculation described in subsection (E)(1) is eventually exceeded by the number of total service units realized by the actual development, the City may, at its sole discretion, collect the full impact fee minus any associated offset or credits for the excess service units.
- (3) At its sole discretion, the City Council may authorize alternative credit or offset agreements upon petition by the owner.

**§ 100.15 EXEMPTIONS**

(A) Affordable Housing. Development that qualifies as affordable housing under 42 U.S.C. Section 12745, as amended, and is participating in an affordable housing development program such as HOME, Housing Trust Fund, Low Income Housing Tax Credit, or Habitat for Humanity, is exempt from roadway impact fee collection. An applicant for affordable housing exemption shall make application for same by letter to the Planning Director. The letter shall describe the development, its location and number of housing units, and shall include written verification from the responsible agency that the subject property is an active participant in an affordable housing development program as described above. If the fee is not paid and the affordable housing is not built or the development subsequently is not qualified as affordable housing, the City shall assess and collect the roadway impact fee that was applicable at the time of the issuance of the building permit(s) for the development.

(B) The City Council may exempt a development from paying a roadway impact fee by contract or development agreement.

#### **§ 100.16 ESTABLISHMENT OF ACCOUNTS AND RECORDS.**

(A) The City shall establish separate interest-bearing accounts in a bank authorized to receive deposits of City funds for each major category of roadway facility for which an impact fee is imposed pursuant to this Chapter.

(B) Interest earned by each account shall be credited to that account and shall be used solely for the purposes specified for funds authorized in § 100.17.

(C) The City shall establish adequate financial and accounting controls to ensure that impact fees disbursed from the account are utilized solely for the purposes authorized in § 100.17. Disbursement of funds shall be authorized by the City at such times as are reasonably necessary to carry out the purposes and intent of this Chapter; provided, however, that any fee paid shall be expended within a reasonable period of time, but not to exceed ten years from the date the fee is deposited into the account.

(D) The City shall maintain and keep adequate financial records for each such account, which shall show the source and disbursement of all revenues, which shall account for all monies received and which shall ensure that the disbursement of funds from each account shall be used solely and exclusively for the provision of uses specified in the roadway improvements program as system-related capital projects. The City Finance Department shall also maintain such records as are necessary to ensure that refunds are appropriately made under the provision in § 100.19 of this Chapter and any other information as may be necessary for the proper implementation of this Chapter.

#### **§ 100.17 USE OF PROCEEDS OF ROADWAY IMPACT FEE ACCOUNTS.**

(A) The impact fees collected pursuant to this Chapter may be used to finance or to recoup capital construction costs of service. Impact fees may also be used to pay the principal sum and interest and other finance costs on bonds, notes or other obligations

issued by or on behalf of the City to finance the roadway improvements or facilities expansions.

(B) Impact fees collected pursuant to this Chapter shall not be used to pay for any of the following expenses:

(1) Construction, acquisition or expansion of capital improvements or assets other than those identified in the Roadway Improvements Plan.

(2) Repair, operation or maintenance of existing or new roadway improvements or facilities expansions.

(3) Upgrading, expanding or replacing existing roadway improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards.

(4) Upgrading, expanding or replacing existing roadway improvements to provide better service to existing development; provided however, that impact fees may be used to pay the costs of upgrading, expanding or replacing existing roadway improvements in order to meet the need for new roadway improvements generated by new development.

(5) Administrative and operating costs of the City.

### **ARTICLE III. ADMINISTRATION AND ENFORCEMENT**

#### **§ 100.18 APPEALS.**

(A) The property owner or applicant for new development may appeal the following decisions to the Planning Director, or his/her designate:

(1) The applicability of an impact fee to the development.

(2) The value of the impact fee due.

(3) The availability or the value of an offset or credit.

(4) The application of an offset or credit against an impact fee due.

(5) The amount of the refund due, if any.

(B) All appeals shall be taken within 30 days of notice of the action from which the appeal is taken.

(C) The burden of proof shall be on the appellant to demonstrate that the value of the fee or the value of the offset or credit was not calculated according to the applicable impact fee schedule or the guidelines established for determining offsets and credits.

(D) The appellant may appeal the decision of the Planning Director to the Council. A notice of appeal to the Council must be filed by the applicant with the City Secretary within 30 days following the Planning Director's decision. If the notice of appeal is accompanied by a bond or other sufficient surety satisfactory to the City Attorney in an amount equal to the original determination of the impact fee due, the development application, subdivision plat, or building permit issuance may be processed while the appeal is pending.

#### **§ 100.19 REFUNDS.**

(A) Any impact fee, or portion thereof, collected pursuant to this Chapter which has not been expended within ten years from the date of payment, shall be refunded, upon application, to the record owner of the property at the time the refund is paid, or, if the impact fee was paid by another governmental entity, to the governmental entity.

(B) If a refund is due pursuant to division (A), the City shall pro-rate the same by dividing the difference between the amount of expenditures and the amount of the fees collected by the total number of service units actually developed within the service area for the period to determine the refund due per service unit. The refund to the record owner or governmental entity shall be calculated by multiplying the refund due per service unit by the number of service units for the development for which the fee was paid and interest due shall be calculated upon that amount.

(C) Petition for refunds shall be submitted to the Planning Director on a form provided by the City for such purpose. Within one month of the date of receipt of a petition for refund, the Planning Director must provide the petitioner, in writing, with a decision on the refund request, including the reasons for the decision. If a refund is due to the petitioner, the Planning Director shall notify the Finance Director and request that a refund payment be made to the petitioner. The petitioner may appeal the determination to the Council, as set forth in § 100.23.

#### **§ 100.20 ADVISORY COMMITTEE.**

(A) Effective April 1, 2007, the Planning Commission shall serve as the Roadway Impact Fee Advisory Committee.

(B) The functions of the Advisory Committee are those set forth in the Local Government Code, Ch. 395, as amended, or any successor.

(C) The City shall make available to the Advisory Committee any professional reports prepared in the development or implementation of the Roadway Improvements Plan.

(D) The Committee shall adopt procedural rules for carrying out its duties.

#### **§ 100.21 AGREEMENT FOR CAPITAL IMPROVEMENTS.**

The City Council may authorize the owner of a new development to construct or finance some of the public improvements identified in the CIP. In the case of the approval, the property owner must enter into an agreement with the City prior to fee collection. The agreement shall be on a form approved by the City and shall establish the estimated cost of improvement, the schedule for initiation and completion of the improvement, a requirement that the improvement shall be completed to City standards and any other terms and conditions the City deems necessary. The PW Director shall review the improvement plan, verify costs and time schedules, determine if the improvement is contained in the roadway impact feeCIP and determine the method and timing of reimbursing the owner for construction costs from impact fee or other revenues.

#### **§ 100.22 IMPACT FEES AS ADDITIONAL AND SUPPLEMENTAL REGULATION.**

(A) Impact fees established by this Chapter are additional and supplemental to, and not in substitution of, any other requirements imposed by the City on the development of land or the issuance of building permits or the issuance of certificates of occupancy. The fees are intended to be consistent with and to further the policies of City's Comprehensive Plan, Capital Improvements Plan, zoning ordinance, platting regulations and other city policies, ordinances and resolutions by which the city seeks to ensure the provision of adequate public facilities in conjunction with the development of land.

(B) This Chapter shall not affect, in any manner, the permissible use of property, density of development, design and improvement standards and requirements, or any other aspect of the development of land or provision of public improvements subject to the zoning, access management and platting regulations or other regulations of the City, which shall be operative and remain in full force and effect without limitation with respect to all such development.

(C) Except as herein otherwise provided, the assessment and collection of the roadway impact fee shall be additional and supplemental to, and not in substitution of, any other tax, fee, charge or assessment which is lawfully imposed on and due against the property.

#### **§ 100.23 RELIEF PROCEDURES.**

(A) Any person who has paid an impact fee or an owner of land upon which an impact fee has been paid may petition the Council to determine whether any duty required by this Chapter has not been performed within the time so prescribed. The petition shall be in writing and shall state the nature of the unperformed duty and request that the act be performed within 60 days of the request. If the Council determines that the duty is

required pursuant to this Chapter and is late in being performed, it shall cause the duty to commence within 60 days of the date of the request and to continue until completion.

(B) The Council may grant a variance or waiver from any requirement of this Chapter upon written request by a developer or owner of property subject to this Chapter, following a public hearing, upon finding that a strict application of the requirement would not be in the best interests of the City or would be inconsistent with City policy. The Council may deny a variance, grant the variance in whole or in part, or approve the variance with conditions.

(C) The fee for a variance application under this Section is \$250.00 which shall be paid by the applicant for the variance at the time of filing a request for variance.

#### EXHIBIT 1

(Table of fees by land use type)



